

TENTATIVE RULINGS for CIVIL LAW and MOTION

July 27, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: C&S Wholesale Grocers, Inc. v. County of Yolo
Case No. CV CV 07-2565

Hearing Date: July 27, 2009 Department Fifteen 9:00 a.m.

Motion to compel interrogatory responses, to have requests for admission deemed admitted and for monetary sanctions

C&S Wholesale Grocers, Inc.'s unopposed motion to compel responses to its form interrogatories, set no. one to County of Yolo is **GRANTED**. (Code Civ. Proc., § 2030.290, subd. (b).) The unopposed motion to have the truth of the matters stated and the genuineness of documents specified in request for admissions, set no. one from C&S Wholesale Grocers, Inc. to County of Yolo deemed admitted is **GRANTED**. (Code Civ. Proc., § 2033.280, subds. (b) and (c).)

The unopposed request for monetary sanctions against County of Yolo and its counsel is **GRANTED** in the amount of \$1,725.00. (Code Civ. Proc., § 2033.280, subd. (c); Cal. Rules of Court, rule 3.1348.)

County of Yolo shall serve verified answers to the form interrogatories, without objections, **by no later than August 7, 2009**.

Motion to compel compliance with court order and for monetary sanctions

C&S Wholesale Grocers, Inc.'s unopposed motion to compel compliance with the May 21, 2009, order is **GRANTED**. (Code Civ. Proc., §§ 177, 2023.010, subds. (d) and (g), 2023.030, and 2030.290, subd. (c).) The unopposed request for monetary sanctions against County of Yolo and its counsel is **GRANTED** in the amount of \$1,150.00.

County of Yolo shall serve plaintiff's counsel with the draft stipulation regarding evidentiary matters **by no later than August 7, 2009**.

Counsel are directed to meet and confer in good faith about dates for the taking of Joel Butler's deposition. Counsel for defendant shall promptly provide plaintiff's counsel with dates when Joel Butler is available for deposition. If counsel for defendant fails to provide such dates by August 7, 2009, or the parties fail to agree upon a date by August 7, 2009, the plaintiff may unilaterally set the date for Mr. Butler's deposition.

C&S Wholesale Grocers, Inc. shall serve counsel for the defendant with a copy of this order by no later than July 29, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: County Fair Fashion Mall, LLC v. Fireman's Fund Ins. Co.
Case No. CV CV 09-80

Hearing Date: July 27, 2009 Department Fifteen 9:00 a.m.

Defendants Fireman's Fund Insurance Company's ("Fireman's Fund"), American Insurance Company's ("AIC") and Kenneth J. Borque's demurrer to plaintiff's first amended complaint ("FAC") is **SUSTAINED IN PART** and **OVERRULED IN PART** as follows:

Defendant Fireman's Fund's and AIC's demurrer to the first cause of action for breach of contract and the second cause of action for breach of the implied covenant of good faith and fair dealing is **OVERRULED**. Plaintiff's FAC states facts sufficient to state a cause of action for breach of contract and breach of the implied covenant of good faith and fair dealing. (*Tran v. Farmers Group, Inc.* (2002) 104 Cal.App.4th 1202, 1210.)

Defendants Fireman's Fund's and AIC's demurrer to the third cause of action for fraud and the fourth cause of action for negligent misrepresentation is **OVERRULED**. Plaintiff's FAC states facts sufficient to state a cause of action for fraud and a cause of action for negligent misrepresentation against defendants Fireman's Fund and AIC. (Code Civ. Proc., § 430.10, subd. (e).)

Defendant Kenneth J. Borque's demurrer to the fourth cause of action for negligent misrepresentation is **SUSTAINED WITH LEAVE TO AMEND**. A corporate employee, acting within the scope of his employment, cannot conspire with the corporate principal to commit fraud based on negligent misrepresentation. (*Black v. Bank of America* (1994) 30 Cal.App.4th 1, 6.) There are no allegations in the FAC that Borque acted outside his official capacity as an agent for Fireman's Fund. Therefore, plaintiff's FAC fails to state facts sufficient to state a cause of action for negligent misrepresentation against defendant Kenneth J. Borque.

Defendants' demurrer to the fifth cause of action for intentional infliction of emotional distress is **SUSTAINED WITH LEAVE TO AMEND**. Plaintiff, a corporation, cannot suffer

emotional distress as a matter of law. Mr. Arjmand, not a party to the action, cannot recover such damages by way of the corporation. (*Tan Jay International, Ltd. v. Canadian Indem. Co.* (1988) 198 Cal.App.3d 695, 706.) Mr. Arjmand has not made any claims as an individual against defendants.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

CASE: Erb v. Xcelerated Xpress CA, LLC
Case No. CV CV 09-1099

Hearing Date: July 27, 2009 Department Fifteen 9:00 a.m.

This matter is taken off calendar upon the request of the moving parties. The Court is informed that the plaintiff will file a notice of settlement by August 3, 2009.

TENTATIVE RULING

Case: Merino et al. v. Beazer Homes Holding Corp. et al.
Case No. CV CV 08-3415

Hearing Date: July 27, 2009 Department Fifteen 9:00 a.m.

Defendants Southport Gateway, L.P.'s, Ryder West Sac., LLC's, and Ryder Homes of California, Inc.'s motion to bifurcate is **GRANTED**. (Code Civ. Proc., §§ 128, 378-379.5, 578, 579 & 1048.) The Court finds that severance of plaintiffs' action against these defendants will promote judicial economy and the interests of justice. Accordingly, the Court **ORDERS** plaintiffs to dismiss their action against defendants Southport Gateway, L.P., Ryder West Sac., LLC, and Ryder Homes of California, Inc. and to file a separate action.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: People v. \$487.00
Case No. CV PT 07-1018

Hearing Date: July 27, 2009 Department Fifteen 9:00 a.m.

The People are directed to appear to advise the Court of any related criminal action. A judgment of forfeiture against the claimant requires, as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in Health and Safety Code section 11470, subdivision (f) which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notice of intent to seek forfeiture. (Health and Safety Code, § 11488.4, subd. (i)(3).)